

8/22/01

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE	:	
COMPANY,	:	
	:	
Plaintiff	:	3:CV-99-1659
	:	
v.	:	
	:	(Chief Judge Vanaskie)
CHARLES ORTIZ, JR.,	:	
	:	
Defendant	:	

MEMORANDUM

At issue in this declaratory judgment action brought under the Court's diversity jurisdiction is whether defendant Charles Ortiz, Jr., age 18, was covered by his parents' automobile insurance when he was seriously injured in an automobile accident that occurred in Tennessee. Specifically, the dispositive question is whether Ortiz fell within the definition of the term "relative" in the policy issued to his parents, who live in Pennsylvania. Nationwide Mutual Insurance Company ("Nationwide") contends that Ortiz does not fall within the policy definition of relative -- "one who regularly lives in your household, related to you by blood, marriage or adoption" -- because he had been living in Tennessee for about four (4) months when the accident happened. Ortiz, pointing out that the policy expressly states that "[a] relative may live temporarily outside [the policyholder's] household," contends that his Tennessee sojourn was not intended to be permanent and that he always planned on returning to his parents' home.

Having carefully considered the evidence and argument presented in the non-jury trial in this matter, I conclude that Mr. Ortiz was a child who “regularly” lived in his parents’ household in Pennsylvania and that he was temporarily living outside the household when he was injured in the Tennessee accident. Accordingly, he is entitled to first-party medical and underinsurance motorist benefits under the policy.

## **PROCEDURAL BACKGROUND**

Nationwide filed its complaint seeking declaratory relief on September 15, 1999. The defendant in this action is Charles Ortiz, Jr., the son of Gladys and Charles Ortiz, Sr., who are the insureds under the Nationwide motor vehicle insurance policy at issue. Nationwide seeks a judgment declaring that it has no duty to pay for the medical expenses incurred by Ortiz, Jr., or to provide underinsured motorist benefits. A non-jury trial was held on March 21, 2001 and oral argument was held on May 24, 2001. The parties have submitted proposed findings of fact and trial briefs. The matter is now ripe for disposition.

## **FACTUAL FINDINGS**

Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, I make the following findings of fact:

1. On October 16, 1998, Charles Ortiz, Jr. (“Ortiz”) was a passenger in a car owned and operated by Jeffrey Paul Douglas when the vehicle was involved in a one-vehicle accident in which Ortiz sustained serious injuries. (Statement of Undisputed Facts, Dkt. Entry 15, at ¶¶ 4-5.)

2. The accident occurred in Stewart County, Tennessee. (Id. at ¶ 6.)
3. At the time of the accident, Charles Ortiz, Jr. was 18 years old.
4. Charles Ortiz, Sr. and Gladys A .Ortiz, Ortiz' parents, are the named insureds and policyholders of a motor vehicle insurance policy issued by Nationwide, policy number 58-37-C-772578. The policy covered three vehicles: a 1989 Cadillac Eldorado, a 1989 Dodge Daytona and a 1985 Volkswagen Golf. (Stipulation of Undisputed Facts at ¶ 7; Stipulation, Dkt. Entry 15, at ¶ 3.)
5. In September of 1997, Ortiz, after obtaining his Pennsylvania driver's license, was added to his parents' Nationwide policy at the request of the family's Nationwide Insurance agent, The Frailey Agency. (Stipulation at ¶ 6.) The Frailey Agency had written to Ortiz' parents explaining that their son was required to be listed on the policy. (Ex. B to Statement of Undisputed Facts.) Ortiz' parents provided the Frailey Agency with the necessary information pertaining to their son.
6. Prior to the date of the accident, Ortiz' parents received a declaration page for the subject policy which listed Gladys and Charles Ortiz as the named insured, but did not identify their son as a named insured.
7. From September, 1997 until October 16, 1998, Ortiz was the principal driver of the 1985 Volkswagen listed in the Nationwide policy. His parents were the owners of the 1985 Volkswagen. (Stipulation at ¶ 4.)
8. The policy premium was calculated based on Ortiz being the principal driver of the

Volkswagen Golf. (Stipulation at ¶ 7.)

9. On October 16, 1998, the Nationwide policy issued to Ortiz' parents was fully paid and in full force and effect. (Statement of Undisputed Facts at ¶ 8.)

10. At the time of the accident, Ortiz' parents resided at R.D. 6, Box 6785, East Stroudsburg, Monroe County, Pennsylvania. Ortiz and his parents moved to that residence in 1993. (Statement of Undisputed Facts at ¶ 3; Trial Transcript ("T.T."). at 10.)

11. From 1993 to the date of the accident, Ortiz had a furnished bedroom in his parents' house.

12. Ortiz lived with his parents while attending East Stroudsburg High School. When he left school at the age of 17 in September of 1997, he continued to live at his parents' house. (Statement of Undisputed Facts at ¶¶ 11, 12.)

13. During the winter of 1997, Ortiz worked for a brief time at the Alpine Ski Area and resided at his parents' home. (T.T. at 14-15.)

14. From March 5 through April 15, 1998, Ortiz was employed by Cindy Payne Sales to sell magazines door to door. (Statement of Undisputed Facts at ¶ 13.) His employer transported him to locations throughout the northeastern United States, and he lived in hotel rooms. While working at this job, Ortiz left all of his personal belongings, other than some clothing and a guitar, at his parents' home. (T.T. at 15-16.)

15. When Ortiz concluded selling magazines in April of 1998, he returned to his parents' home. (T.T. at 17, 64.)

16. In June 1998, Ortiz received a call from Joseph Alan Baggett, a friend he met while selling magazines. Baggett, who lived in Cumberland City, Tennessee, invited Ortiz to come visit him. Ortiz decided to accept Baggett's offer and prepared to leave home to visit Baggett on that same day. (Statement of Undisputed Facts at ¶¶ 14, 16; T.T. at 18-19.)

17. When Ortiz left to visit Baggett, he took some clothing, one guitar, one amplifier and assorted music compact discs and tapes. He left behind at his parents' home approximately three additional guitars, amplifiers, furniture and clothing. (T.T. at 19-20, 68-69.)

18. Ortiz drove the 1985 Volkswagen listed in his parents' Nationwide insurance policy to Tennessee. Before leaving, his mother gave him approximately \$100 and filled his car with gas. (T.T. at 20-21.)

19. Ortiz' mother didn't believe that he was moving away from home, but rather that he was going to visit a friend and would return home. (T.T. at 66-67.)

20. Neither Ortiz nor his mother advised Nationwide or the Nationwide agency that he intended to travel to Tennessee with the vehicle. (T.T. at 43-44, 77.)

21. When Ortiz arrived in Tennessee, he stayed at the home of Joseph Alan Baggett, who lived at 280 Sidney Clements Road, Cumberland City, Tennessee. The defendant lived with the Baggetts for approximately two to three months. (Statement of Undisputed Facts at ¶ 16; Baggett Dep. at 13.)

22. During his stay at the Baggett home, Ortiz shared a room with Baggett. He did not pay rent to either Baggett or his parents. He did not purchase furniture for the Baggetts'

home, nor did he make any other financial contribution to the household. (T.T. at 22; Baggett Dep. at 13, 15.)

23. Baggett understood Ortiz to be visiting, not moving in permanently. (Baggett Dep. at 9.)

24. Ortiz advised Baggett that he intended to return to Pennsylvania. (Baggett Dep. at 43, 49.)

25. Baggett and Ortiz had also discussed Baggett returning to Pennsylvania with Ortiz in order to form a rock band because Ortiz had a friend in Pennsylvania who was a drummer. (T.T. at 49-50; Baggett Dep. at 10-12.)

26. During the time at the Baggett residence, Ortiz did not obtain any permanent employment. He did, however, work at Labor Ready, a temporary employment agency, on four separate days. (Statement of Undisputed Facts at ¶ 17.) When Ortiz applied for employment with Labor Ready, he listed his address as Sidney Clements, Cumberland, Tennessee, the Baggett residence. (T.T. at 45.)

27. After leaving the Baggett residence, Ortiz stayed at the home of Anita Smith and Chris Holland, at 446 Scotts Chapel Road, Cumberland City, Tennessee. (Statement of Undisputed Facts at ¶ 16.) Chris Holland was a friend of Baggett, whom Ortiz had met while in Tennessee. (T.T. at 28; Bagget Dep. at 15.) Anita Smith is Chris Holland's mother. Ortiz stayed at the Holland residence for about two to three weeks.

28. While staying at the Smith/Holland residence, Ortiz slept on a couch in Holland's

bedroom. He did not sign a lease or pay rent to either Smith or Holland. (T.T. at 28.)

29. During his time at the Baggett residence, Ortiz began to experience car trouble. The car became inoperable while he was living at the Smith/Holland residence. (T.T. at 29.) As a result, he decided to obtain regular full-time employment in Tennessee in order to repair the Volkswagen or, alternatively, to purchase a new car for the purpose of returning to Pennsylvania by Thanksgiving. (Id.)

30. While in Tennessee, Ortiz spoke with his parents on at least a weekly basis by making collect telephone calls. (T.T. at 23.) In these calls, he expressed his plan to return to his home in Pennsylvania by Thanksgiving, 1998. (T.T. at 29, 68.) The need to return home became more urgent once Gladys Ortiz advised her son in August of 1998 that his grandmother was gravely ill. (T.T. at 30.)

31. While living at the Baggett residence, Ortiz met Mark Degulius, the parent of Crystal Degulius, one of the defendant's friends in Tennessee. (T.T. at 24.)

32. Degulius was an electrician in the International Brotherhood of Electrical Workers Union (IBEW). Degulius spoke with Ortiz about joining the IBEW. (T.T. at 25; Degulius Dep. at 6-7.)

33. In his conversations with Degulius, Ortiz always indicated that he intended to go "back home" to Pennsylvania. As a result, defendant and Degulius looked at an IBEW directory that listed all local unions throughout the country, looking for locals near Ortiz' residence in Monroe County, Pennsylvania. (T.T. at 25; Degulius Dep. at 8, 10-11.)

34. Degulius understood that Ortiz was looking for work in Tennessee for the purpose of fixing his vehicle or buying a new car so he could return home. (Degulius Dep. at 11.)

35. With the assistance of Degulius, Ortiz obtained employment at Techmart, where he worked from August 19 to August 29, 1998. (Statement of Undisputed Facts at ¶ 17; T.T. at 28, 37; Degulius Dep. at 9.) In his application for employment with Techmart, he listed his address as Sidney Clements, Cumberland, Tennessee, the address for the Baggett residence. (T.T. at 45.)

36. Degulius called the referral agent at the IBEW Nashville Local Union and was advised to have Ortiz come down and complete an application and pay an initiation fee. (Degulius Dep. at 16.) Ortiz applied to the union on July 10, 1998. (Statement of Undisputed Facts, Exh. D.) In order to become a member of the local union and to work as an apprentice, Ortiz was required to be a resident of the State of Tennessee. (Degulius Dep. at 17.) Ortiz therefore wrote the Baggett address on his IBEW application. (T.T. at 26.)

37. On September 13, 1998, Ortiz obtained employment through NPS Energy Services working at the TVA Plant, Cumberland City, Tennessee. He worked there until the date of his accident. (Statement of Undisputed Facts at ¶ 17.) Membership in the IBEW was a prerequisite to gain employment at the TVA Facility.

38. All applications and forms filed by Ortiz with NPS Energy listed as his address the Baggett residence at 280 Sidney Clements, Cumberland, Tennessee. (T.T. at 44.)

39. At the time Ortiz commenced work at TVA, his vehicle was no longer operable.



He left his car at the Smith/Holland residence. (T.T. at 29, 31.)

40. While working at TVA, Ortiz resided at Mack's Place, a rooming house in Cumberland City, Tennessee, located near the TVA plant. (Statement of Undisputed Facts at ¶ 16.) He lived in a single room with no kitchen, and obtained most of his meals at the convenience store across the street. Rent was paid in cash on a weekly basis. (T.T. at 30-31.)

41. While working at the TVA plant, Ortiz intended to save money to either fix his car or purchase a new car so that he could return home to Pennsylvania by Thanksgiving 1998. The cost of the repairs required to fix Ortiz' car would have exceeded its value. (T.T. at 52-53.)

42. Degulius intended to transport his daughter, Crystal, to Pennsylvania during Thanksgiving to visit Ortiz, based upon an understanding that Ortiz would be going back home to Pennsylvania to stay by Thanksgiving 1998. (Degulius Dep. at 19-20.)

43. During the time he was in Tennessee, the defendant never applied for a Tennessee driver's license. (T.T. at 33.)

44. At the time of the accident, Ortiz had a valid Pennsylvania driver's license bearing the address of his parents' residence in East Stroudsburg. (Statement of Undisputed Facts at ¶ 10.)

45. Ortiz applied for a social security card while residing in Tennessee and listed a Tennessee address on his application. (T.T. at 54-55.)

46. While in Tennessee, Ortiz never opened a bank account. (T.T. at 33.)

47. Ortiz did not have a girlfriend where his parents resided in Stroudsburg,

Pennsylvania. (T.T. at 39.)

48. As of the date of the accident, Ortiz had no permanent employment in the Stroudsburg, Pennsylvania area. (T.T. at 40.)

49. Ortiz never corresponded with a local union or made an application for union membership in the Commonwealth of Pennsylvania. (T.T. at 40.)

50. The IBEW did not at any time prior to the date of the accident look to transfer any request for membership by Ortiz from the State of Tennessee to the Commonwealth of Pennsylvania.

51. Ortiz maintained no bank accounts or credit cards while he was residing in Stroudsburg, Pennsylvania. (T.T. at 40.)

52. During the entire time he was in Tennessee, Ortiz continued to have his own bedroom at his parent's residence which contained his belongings, including his guitars, amplifiers and clothing. (T.T. at 68-69.)

## DISCUSSION

The Nationwide policy at issue in this case provides first-party benefit and underinsured motorist coverage to all relatives of an insured. "Relative" is defined in the general "Definitions" portion of the policy as "one who regularly lives in your household, related to you by blood, marriage or adoption (including a ward or foster child). A relative may live temporarily outside

your household.” (Emphasis added.)<sup>1</sup> The outcome of this case hinges on the interpretation of this language, specifically whether Charles Ortiz regularly lived in his parent’s household and whether he was temporarily living outside of the home at the time of his accident in October of 1998.

The United States Court of Appeals for the Third Circuit recently summarized the principles under Pennsylvania law governing the interpretation of insurance policies:

When the language of an insurance contract is clear and unambiguous, a court is required to enforce the language. Furthermore, if possible, “a court should interpret the policy so as to avoid ambiguities and give effect to all of its provisions.”

The courts have held, however, that “if the policy provision is reasonably susceptible to more than one interpretation, it

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<sup>1</sup>It must be noted that “relative” is also defined in the first party benefit portion of the policy. That definition is:

“Relative” means the following residents of the policyholder’s household:

- a. spouse
- b. anyone related to the policyholder or spouse by blood, marriage, or adoption; and
- c. a minor in the legal custody of the policyholder or such relative. A relative may live temporarily outside the household. (Emphasis added).

Although the general definition uses the phrase “regularly lives,” while the first party benefits definition uses the phrase “residents of” the policyholder’s household, both definitions provide that a relative “temporarily living” outside the household remains covered. Neither party has argued that there is a difference in intent with respect to the two definitions such that there could be underinsured motorist coverage (to which the general definition applies), but not first party benefits (to which the additional definition of “relative” applies). For that reason, the slightly differing definitions of the term “relative” will be interpreted in pari materia.

is ambiguous.” “In determining whether a contract is ambiguous, the court must examine the questionable term or language in the context of the entire policy and decide whether the contract is ‘reasonably susceptible of different constructions and capable of being understood in more than one sense.’” “Ambiguous provisions in an insurance policy must be construed against the insurer and in favor of the insured; any reasonable interpretation offered by the insured, therefore, must control.”

Medical Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999)(citations omitted). To support a finding of an ambiguity, there must be at least two reasonable interpretations of the term in issue. Aetna Casualty & Surety Co. v. DeBruicker, 838 F. Supp. 215 (E.D. Pa. 1993), aff’d mem., 30 F.3d 1484 (3d Cir. 1994). That is, contract ambiguity refers to “the condition of admitting two or more meanings, of being understood in more than one way . . . .” Mellon Bank N.A. v. Aetna Business Credit, 619 F.2d 1001, 1011 (3d Cir. 1980).

Nationwide suggests that the language of the policy is unambiguous and should be interpreted consistent with the traditional concepts of residency. Ortiz, on the other hand, contends that the inclusion of the phrase, “living temporarily outside your household,” makes the policy ambiguous, thus warranting construction of the policy in his favor.

Pennsylvania courts have frequently distinguished between the terms domicile and resident in the context of insurance policies. Domicile is considered “the place where a [person] has a true, fixed and permanent home . . . and to which . . . he [or she] has an intention of returning.” Amica Mutual Ins. Co. v. Donegal Mutual Ins. Co., 376 Pa. Super. 109, 115, 545

A.2d 343, 346 (1988). Residence, on the other hand, is considered “living in an actual place, requiring only physical presence.” Id. When the term residence is used in a policy absent some words of refinement, it is considered to have this more transitory meaning.

Nationwide relies on St. Paul Fire & Marine Ins. Co. v. Lewis, 935 F.2d 1428 (3d Cir. 1991), and Nationwide Mutual Ins. Co. v. Budd-Baldwin, 947 F.2d 1098 (3d Cir. 1991), to support its position. The court in Lewis discussed the language “living with” in the context of an insured who claimed to be living with his parents for purposes of coverage under their insurance policy. It was undisputed that at the time of the accident he was not living with his parents. Instead, he and a roommate were living in an apartment in a different building than his parents. The evidence also showed, however, that the son frequently visited his parents for meals and holidays, used his parents’ address to receive mail and listed his parent’s address on his driver’s license and other miscellaneous documents. Id. at 1430. The parents maintained a separate room for their son in their condominium unit, and he stored personal belongings there. The court held that under the circumstances of the case, the term “living with” was unambiguous, observing that “the concept of living with someone contemplates . . . some consistently personal contact with that person’s home. Occasional, sporadic and temporary contacts are insufficient.” Id. at 1431-32.<sup>2</sup>

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<sup>2</sup>It must be noted that the court did not address whether the term “living with” would be ambiguous as applied to members of the military or full-time students. Lewis, 935 F.2d at 1432. Nor did it address the question of whether a person could live in more than one place and still  
(continued...)

The Third Circuit in Nationwide Mutual Ins. Co. v. Budd-Baldwin examined the meaning of the language “regularly lives” in a Nationwide policy similar to that presented in the instant case. In Budd-Baldwin, the insured plaintiff, an administratrix of her brother’s estate, brought an action seeking first-party and underinsured motorist benefits on behalf of her brother, David Budd, under the terms of her insurance policy, asserting that Budd was a resident relative. 947 F.2d at 1100. The insurance policy defined relative in the same language at issue in this case: “one who regularly lives in your household, related to you by blood. . . . A relative may live temporarily outside your household.” Id. at 1101. The court found that Nationwide added “words of refinement” to the term residence to mean something more than its common law definition, which connoted physical presence. It indicated that the term “regularly” suggested something that recurs at fixed or uniform intervals, adding:

When we combine the dictionary definition with the facts of every day life, it is clear that to occupy a home means to be able to call that place one’s own, to claim it as a place where one has a right to be. The word home itself connotes a place where one belongs and can always go with a certainty that he will be taken in. It connotes not only a physical place, i.e., the place where one eats meals, sleeps, socializes and generally spends time when not ‘otherwise engaged with the activities of life,’ but a sense of belonging. This definition clearly excludes persons who are mere visitors to the

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<sup>2</sup>(...continued)  
be covered. Id. at 1432-33. In this case, the Nationwide policy contemplates that an insured’s child may be living in a place other than the insured’s household and still be covered by qualifying the phrase “living with” by the adverb, “regularly,” and by explicitly providing that one who lives “temporarily” outside the insured’s household remains covered.

residence, however frequently they may visit and however certain they may be that they will always be taken in. Temporary visits, however frequent or regular, are simply insufficient to establish residency.

Budd-Baldwin, 947 F.2d at 1102. The court went on to hold that Budd did not “regularly live” in his sister’s household. As the court indicated, Budd last lived with his sister in Pennsylvania on a full-time basis in 1986. “At the time of his death, he lived in New Jersey five days a week, worked in New Jersey, owned a business there, and kept his personal belongings there. . . .” Id. at 1103. According to the court, Budd’s connection with his sister’s residence was limited to frequent weekend visits to visit his fiancée. The court noted that “the fact remains that his frequent visitor status did not make him part of the household. He did not ‘regularly live’ with [his sister] under any reasonable interpretation of that term.”<sup>3</sup> Id. at 1104; see also Nationwide Mutual Ins. Co. v. Krause, No. Civ. A. 98-3350, 2000 WL 255987 (E.D. Pa. March 7, 2000)(child of divorced parents who lived with her mother and stayed with her father only sporadically did not truly “belong” at her father’s home and thus was not regularly living with him so as to qualify as a relative under the terms of the insurance policy). Because the court found that Budd did not “regularly live” with his sister, it did not address the additional language of the policy

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<sup>3</sup>The court found distinguishable the situation before it and the scenario where “persons stay temporarily at the home of another but have a more established connection with the household.” Id. at 1103.

concerning “temporarily residing outside of the household.”<sup>4</sup>

As in Budd-Baldwin, the policy here contains words of refinement - “regularly residing” -- which expands the concept of residency beyond its mere transitory meaning. Accordingly, Ortiz’ physical presence at his parents’ home at the time of his accident was not required for coverage under the policy. Ortiz has provided evidence to suggest that he had an established connection with his parents’ household, thus distinguishing his case from both Budd-Baldwin and Lewis. Unlike Budd-Baldwin, Ortiz lived at his parents’ home consistently from 1993 to the date he left Pennsylvania for Tennessee. He had his own bedroom at his parents’ home and kept all of his belongings there. Although he left his parents’ home to go sell magazines for approximately a month, once he left that job, he again returned to his parents’ home. The evidence further shows that when he left for Tennessee, he took only some of his belongings, the remainder of which stayed at his parents’ house. At oral argument, Nationwide conceded that at the time Ortiz left Pennsylvania for Tennessee, he would have been considered to have been “regularly living” at his parent’s home for purposes of coverage under the policy.

Because Ortiz had been regularly living at his parents’ home prior to leaving for

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<sup>4</sup>The Court in Budd-Baldwin explicitly refrained from deciding how the phrase “regularly lives in your household” “might be applied to other scenarios or whether it is ambiguous as applied to other factual circumstances.” Id. at 1103. As the court observed, several courts have found the phrase “regularly lives” or “lives with” to be ambiguous. See, e.g., Nationwide Mut. Ins. Co. v. Diehl, 768 F. Supp. 140, 141 (E.D. Pa. 1990); Davis v. State Farm Mutual Auto. Ins. Co., 583 So.2d 225, 228 (Ala. 1991); Mundell v. Nationwide Ins. Cos., 181 Misc. 2d 475, 693 N.Y.S.2d 400, 403-04 (1999); Sligh v. Nationwide Mut. Ins. Co., C.A. No. 94C-05-098, 1996 WL 527329, \*4 (Del. Super. Aug. 19, 1996).



Tennessee, the question then becomes whether he was temporarily living outside of his parents' home at the time of the accident.<sup>5</sup> A review of the policy does not provide any guidance in ascertaining the meaning of the term "temporarily," as the term is not defined within the policy itself. The dictionary definition of the word "temporary" is "lasting for a time only, existing or continuing for a limited time, impermanent, transitory." Webster's Third New International Dictionary (1993). The question here is whether Ortiz' stay in Tennessee was transitory. The parties agree that Ortiz' intentions are pertinent in determining the permanence of his departure from Pennsylvania. Nationwide argues that Ortiz could not be considered temporarily living outside of the home because he had no specific date of return to Pennsylvania, nor did he demonstrate an immediate intention to return. The concept of domicile as suggested by Ortiz, on the other hand, requires some evidence of intention to return, but would not require that the return date be precise.

The court in Boswell v. South Carolina Ins. Co., 353 Pa. Super. 108, 509 A.2d 358 (1986), had the opportunity to construe language of the now-repealed No-Fault Statute which included the concept of temporarily living outside the insured's household. In Boswell, the plaintiff was injured in an automobile accident and, as he did not own a car, sought benefits under his son's insurance policy. At the time of the accident, the son was in the United States

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<sup>5</sup>At oral argument, Nationwide counsel concluded by asserting that "the sole issue" to be decided by the Court was whether Ortiz was "temporarily living outside the household" at the time of the accident.

Army and on assignment in Korea. The No-Fault Act included in its definition of “insured”:

(B) a spouse or other relative of a named insured . . . if . . .

(ii) in residence in the same household with a named insured. An individual is in residence in the same household if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.

Id. at 361. The court found that where the concept of being in residence in the same household is expanded to include a person who temporarily lives elsewhere, the term “residence” is closer in meaning to domicile. Because the plaintiff’s son’s military stay in Korea was necessarily of limited duration and he had the intention of returning to his father’s residence, coverage was extended to the father. Cf. Donegal Mutual Ins. Co. v. State Farm Mutual Automobile Ins. Co., 377 Pa. Super. 171, 546 A.2d 1212 (1988)(plaintiff’s principal residence was in Delaware, not in the household of his cousin, although he was temporarily staying with her, paid her weekly rent and received public assistance at her address, because he did not usually make his home there and was not considered part of the social unit).

Although the No-Fault statute is not at issue here, the Boswell court’s analysis of the “temporary living” language to incorporate domiciliary intent is instructive. The court considered objective factors such as past behavior, location of possessions and current residence in determining the individual’s domiciliary intent. The existence of a definite return date was not dispositive. The Boswell court’s analysis is also consistent with the approach taken in Budd v. Baldwin, which focused on whether the person claiming coverage had to have a “sense of

belonging” in the insured’s household, with the insured’s house being “a place where one has a right to be.” 947 F.2d at 1102.<sup>6</sup>

Considering the facts in their totality, it is apparent that Ortiz considered Pennsylvania his home and intended to return there around Thanksgiving of 1998, not for a visit, but to resume his living with his parents. Ortiz’ decision to visit Baggett in Tennessee was spontaneous, and he left with only very little money and a few of his belongings. Once arriving in Tennessee, Ortiz stayed with friends, sleeping either in spare rooms or on couches. At no time while in Tennessee did Ortiz have what could be considered a permanent residence. Ortiz did not have a regular job until such time that his car broke down and he needed money to fix it. Only at that point did he speak with Mark Degulius about getting work through the IBEW. All of his friends and acquaintances in Tennessee stated that they understood that Ortiz was only in Tennessee to visit, and did not intend to stay permanently. Moreover, the temporariness of Ortiz’ visit is evidenced by his repeated comments to friends and family that he intended to return to Pennsylvania once he could get enough money to fix his car. Although, as Nationwide points

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<sup>6</sup>In this case, Nationwide could have defined the term “temporarily” to mean an absence with a definite date of intended return, or it could have explained that only children in the military or at college would be regarded as temporarily living outside the insured’s household. It did not do so. The term “temporarily” can reasonably be understood as transitory or impermanent, but without a definite ending point. To the extent that both parties have advanced reasonably plausible interpretations of this term, there is an ambiguity in the contract. The risk of uncertainty from the use of the indefinite phrase “temporarily living” outside the insured’s household must therefore be borne by Nationwide. Amica Mut. Ins. Co., 376 Pa. Super. at 113, 545 A.2d at 345.

out, Ortiz used a Tennessee mailing addresses on his job applications, Ortiz' actions were justified due to the possibly extensive turnaround time in receiving mail had he used his parents' address. Furthermore, the fact that he used an address at which he was not living undermines Nationwide's contention that use of the address signified an intent to reside in Tennessee. The weight of the evidence suggest that there was no place in Tennessee that Ortiz considered home, that he never made any serious attempts to make Tennessee his home, and that his intentions in traveling to Tennessee were to visit a friend, not to relocate.<sup>7</sup> Accordingly, because Ortiz demonstrated that he was merely temporarily living outside of his parents' home at the time of the accident, he is entitled to coverage under the terms of the policy.<sup>8</sup>

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<sup>7</sup>Nationwide relies upon statements in medical records attributed to Ortiz that indicated that Ortiz told one healthcare provider that he "was planning to reside" in Tennessee, but was now "agreeable to returning to live with his parents," (Diorio Ex.1) and to another healthcare provider that before the accident he "lived with friends in Tennessee," but after discharge from the hospital he "will return to [his] parents . . . home . . . ." (Kinter Ex. 1.) These ambiguous statements do not overcome the weight of the evidence that Ortiz' stay in Tennessee was intended to be temporary. The phrase "planning to reside" in Tennessee certainly does not indicate that he had elected to make Tennessee his domicile. The statement that he was "living with friends" in Tennessee at the time of the accident was neither accurate (he was staying by himself in a boarding house) or indicative of an intent to make Tennessee his home. The evidence plainly preponderates in favor of the contrary conclusion: his parents' household was his place where he belonged when he left for Tennessee and remained so throughout his stay.

<sup>8</sup>Ortiz advanced an alternate argument for coverage based upon the "Reasonable Expectations Doctrine." Succinctly stated, Ortiz contends that because his parents had been told by a Nationwide agent that they had to add him to their policy, and the parents paid a premium calculated on the basis that Ortiz was the principal driver of the Volkswagen Golf, Nationwide should be required to provide coverage. Ortiz' reliance on the Reasonable Expectations Doctrine is misplaced. The fact that he was "added" to the policy and Nationwide  
(continued...)

## CONCLUSION

For all the foregoing reasons, judgment will be entered in favor of Ortiz on Nationwide's request for declaratory judgment concerning Nationwide's duty to provide benefits to Ortiz as a "relative" under his parent's insurance policy. An appropriate Order is attached.

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Thomas I. Vanaskie - Chief Judge  
Middle District of Pennsylvania

DATE: August \_\_\_\_\_, 2001

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NATIONWIDE MUTUAL INSURANCE	:	
COMPANY,	:	
	:	
Plaintiff	:	3:CV-99-1659
	:	
v.	:	
	:	
	:	(Chief Judge Vanaskie)
CHARLES ORTIZ, JR.,	:	
	:	
Defendant	:	

### ORDER

NOW, THIS \_\_\_\_\_ DAY OF AUGUST 2001, for the reasons set forth in the accompanying memorandum, IT IS HEREBY ORDERED THAT:

1. The Clerk of Court is directed to enter judgment in favor of the defendant Charles

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<sup>8</sup>(...continued)  
received a premium based upon the designation of Ortiz as a principal driver of a covered vehicle does not trump the policy language. See Budd-Baldwin, 947 F.2d at 1104-05; Amica Mutual Ins. Co., 376 Pa.Super at 121, 545 A.2d at 349. In this case, Ortiz is entitled to prevail under the policy language, rendering academic his reliance on the Reasonable Expectations Doctrine.

Ortiz, Jr. and against the plaintiff Nationwide Mutual Insurance Company on Nationwide's request for declaratory judgment concerning its duty to provide first party benefits and underinsurance motorist coverage to Ortiz under his parent's automobile insurance policy.

2. The Clerk of Court is directed to mark this case **CLOSED**.

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Thomas I. Vanaskie - Chief Judge  
Middle District of Pennsylvania

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FILED: 8/22/01